UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT		DISTRICT OF VERMONT FILED 2015 SEP 10 PM 12: 51
EDWARD JOHNSON,)	BY VW DEPUTY CLERK
Plaintiff,)	
v.) Case No. 2:14-cv-222	
CARL DAVIS, MARCEL COTE, and MICHAEL EVERSOLE,)))	
Defendants.)	

ENTRY ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

(Docs. 22, 27)

This matter came before the court for a review of the Magistrate Judge's May 7, 2015 Report and Recommendation ("R & R"), in which he recommended that the court grant the motion to dismiss filed by Defendants Carl Davis, Marcel Cote, and Michael Eversole (collectively, "Defendants"). (Doc. 27.) In their motion, Defendants seek dismissal of Plaintiff Edward Johnson's complaint based on the doctrine of res judicata. (Doc. 22.) Plaintiff's claims are based on Defendants' purported failure to review certain video recordings of an incident in which Plaintiff allegedly tampered with a laundry room lock, Defendants' subsequent disciplinary proceedings based on that incident, and the alleged due process violations that occurred in those proceedings.

The Magistrate Judge concluded that res judicata bars Plaintiff's litigation in this matter based on the final decision issued by the Vermont Superior Court in *Johnson v. Pallito*, Docket No. 29-1-13 Oscv, and because Plaintiff's current action involves the same subject matter that he raised in the state court action as well as the same parties or parties in privity to those in Plaintiff's state court action. In addition, the Magistrate Judge determined that Plaintiff litigated or could have litigated his due process claims in

the underlying state court case. Neither party has filed an objection to the R & R, and the time period to do so has expired.¹

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his nine page R & R, the Magistrate Judge carefully reviewed the factual allegations and legal claims in both the complaint and the motion to dismiss and ultimately recommended dismissal of all claims against Defendants based on res judicata. This court finds the Magistrate Judge's decision well-reasoned and adopts the R & R and its recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion (Doc. 27), and GRANTS Defendants' motion to dismiss. (Doc. 22.)

SO ORDERED.

Dated at Burlington, in the District of Vermont, this <u>for</u> day of September, 2015.

Christina Reiss, Chief Judge United States District Court

¹ Plaintiff appealed the Magistrate Judge's R & R on May 21, 2015, which was sent to the Second Circuit on June 9, 2015. Plaintiff's appeal was dismissed on August 4, 2015. Based on the issuance of the mandate on August 4, 2015, the court ordered objections to the R & R to be filed by September 8, 2015.